

If a corporate merger is recognized as a valid merger under the Illinois Business Corporation Act of 1983, then the surviving or new corporation will possess all the rights and privileges of the merged corporations including the ability to use the accumulated MPC of the original corporation or corporations. See 805 ILCS 5/11.50(a)(4) and 86 Ill. Adm. Code 130.331. (This is a GIL).

August 13, 2003

Dear Xxxxx:

This letter is in response to your letter dated March 21, 2003 to Ms. Towers. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are writing this letter to respectfully request a written reply allowing the transfer of the Manufacturer's Purchase Credit ("MPC") earned by AAA during the year 2002 to the newly created AAA entity. The new Company has the same name as the Old Company and continues to operate the same business at the same business location with no change in its personnel, corporate officers, or the nature of its products and services.

BBB, until December 31, 2002, was the parent of AAA (Old Company) which in turn was the parent of CCC, a STATE2 corporation. Effective December 31, 2002, AAA. (Old Company) merged into BBB under STATE1 law. Following that, on the same day, CCC merged into BBB under the laws of STATE1 and STATE2, respectively. In the second merger, the survivor BBB changed its name to AAA New Company.

AAA Old Company, under 35 Illinois Compiled Statutes, Chapter 35, Section 3-85, earned Manufacturer's Purchase Credit on its purchases of machinery and equipment for the Illinois plant. Not all credits earned during the year 2002 were used by the AAA Old Company before its merger. Moreover, we understand the State of Illinois allows the transfer of MPC in a reorganization like the one described above. Accordingly MPC earned by AAA Old Company (sales tax permit closed as of December 31, 2002) would be used by AAA New Company (new sales tax permit secured) for use against its purchases of production related tangible personal property.

If you have any questions related to this matter, please call. We look forward to your written reply.

## DEPARTMENT'S RESPONSE:

Please find enclosed a copy of 86 Ill. Adm. Code 130.331 governing the Manufacturer's Purchase Credit (MPC) (this version is the Department's emergency rules that were adopted because of the repeal of the MPC by Public Act 93-0024). For purchases on and after January 1, 1995 through June 30, 2003, the State of Illinois provided a manufacturer's purchase credit in addition to the exemption for manufacturing machinery and equipment. Purchasers of manufacturing machinery and equipment that qualified for the manufacturing machinery and equipment exemption earned a credit in an amount equal to a fixed percentage of the tax which would have been incurred under the Use Tax or Service Use Tax. See 35 ILCS 105/3-85 and 35 ILCS 110/3-70. From January 1, 1995 through September 30, 2003, accumulated MPC credit may be used to satisfy Use Tax or Service Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. See Section 130.331(b). The credit cannot be used after September 30, 2003 even for audit liabilities. See Section 130.331(b)(10).

As specifically provided in Section 3-85 of the Use Tax Act, the MPC earned by purchase of exempt manufacturing machinery and equipment or graphic arts machinery and equipment is a non-transferable credit. 35 ILCS 105/3-85. If a corporate merger is recognized as a valid merger under the Illinois Business Corporation Act of 1983, then the surviving or new corporation will possess all the rights and privileges of the merged corporations. See 805 ILCS 5/11.50(a)(4). If the mergers described in your letter are recognized as a valid mergers under the Illinois Business Corporation Act of 1983, then the surviving or new corporation would be able to use the accumulated MPC of the original corporation or corporations. If the surviving or new corporation is audited, the Department's auditors will confer with the Illinois Secretary of State's Office to determine whether such mergers are valid under the Illinois Business Corporation Act of 1983.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

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Enc.